e basis of some ethical judgment con-
the deservingness of the gainers and
om the policy.
ght be helpful at this point to review
marize these premises and value judg-
› that they might be in the focus of
n:

d individual preferences matter? If
ndividual preferences, then whose
rences should matter? What about
gical effects that have no perceptible
on human welfare, that is, that lie
e of the set of things over which in-
als have preferences?

he substitution principle hold for en-
nental services? Or are individuals'
ences for environmental goods
graphic? This is an empirical ques-
Economists have developed a sub-
l body of evidence that people are
to make trade-offs between environ-
goods such as recreation, visual
ies, and healthful air and other eco-
goods.

eferences characterized by unlimited
This is also an empirical question.
think that most economists would
hat if there are such limits, we have
gun to approach them for the vast
the citizens of this world. A related
n is whether it should be the objec-
economic activity to satisfy wants
limits? But this question is more
related to question (1) concerning
of individual preferences.

eving an efficient allocation of re-
that important? Or, as Kelman
has argued, should we be willing to
ess economic efficiency in order to
e the idea that environmental values
ome sense superior to economic val-
affirmative answer to the latter
implies a lexicographic preference
and a rejection of the substitution
for environmental goods.

compensation always be paid? Paid
es? Never? This is an ethical ques-
as I have indicated, I think it plays
role in judging the ethical im-

plications of economists' environmental policy recommendations. Not only is there the question of whether compensation should be paid, but also the question of who should be compensated. For example, should compensation be paid to those who are damaged by the optimal level of pollution? Or should compensation be paid to those who lose because of the imposition of pollution control requirements?

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Notes

1. For some empirical evidence in support of this assertion, see Kelman (1981).
2. This is equivalent to saying that the individual has a utility function which assigns utility numbers to all possible consumption bundles. More preferred bundles have higher utility numbers.
3. There are other more technical conditions which need not concern us here.
4. For a different view of the Pareto Criterion and public policy, see Peacock and Rowley (1975).
5. In discussions of the use of risk-benefit analysis in policy making, the distinction is sometimes made between voluntary and involuntary risk. The argument being made is that involuntary risks are somehow worse. But I think that this misses the point. The real distinction is between compensated and uncompensated risk. A compensated risk is one, by the definition of compensation, that the individual would bear voluntarily.
6. The following argument is based on Freeman (1977).

At the Shrine of Our Lady of Fàtima, or Why Political Questions Are Not All Economic

Mark Sagoff

Lewiston, New York, a well-to-do community near Buffalo, is the site of the Lake Ontario Ordinance Works, where the federal government, years ago, disposed of the residues of the Manhattan Project. These radioactive wastes are buried but are not forgotten by the residents, who say that when the wind is southerly radon gas blows through the town. Several parents at a recent conference I attended there described their terror on learning that cases of leukemia had been found among area children. They feared for their own lives as well. At the other sides of the table, officials from New York State and from local corporations replied that these fears were ungrounded. People who smoke, they said, take greater risks than people who live close to waste disposal sites. One speaker talked in terms of "rational methodologies of decisionmaking." This aggravated the parents' rage and frustration.

The speaker suggested that the townspeople, were they to make their decision in a free market, would choose to live near the hazardous waste facility, if they knew the scientific facts. He told me later they were irra-

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tional—he said, "neurotic"—because they refused to recognize or to act upon their own interests. The residents of Lewiston were unimpressed with his analysis of their "willingness to pay" to avoid this risk or that. They did not see what risk-benefit analysis had to do with the issues they raised.

If you take the Military Highway (as I did) from Buffalo to Lewiston, you will pass through a formidable wasteland. Landfills stretch in all directions, where enormous trucks—tiny in that landscape—incessantly deposit sludge which great bulldozers, like yellow ants, then push into the ground. These machines are the only signs of life, for in the miasma that hangs in the air, no birds, not even scavengers, are seen. Along colossal power lines which criss-cross this dismal land, the dynamos at Niagara send electric power south, where factories have fled, leaving their remains to decay. To drive along this road is to feel, oddly, the mystery and awe one experiences in the presence of so much power and decadence.

Henry Adams had a similar response to the dynamos on display at the Paris Exposition of 1900. To him "the dynamo became a symbol of infinity."[1] To Adams, the dynamo functioned as the modern equivalent of the Virgin, that is, as the center and focus of power. "Before the end, one began to pray to it; inherited instinct taught the natural expression of man before silent and infinite force."[2]

Adams asks in his essay "The Dynamo and the Virgin" how the products of modern industrial civilization will compare with those of the religious culture of the Middle Ages. If he could see the landfills and hazardous waste facilities bordering the power stations and honeymoon hotels of Niagara Falls he would know the answer. He would understand what happens when efficiency replaces infinity as the central conception of value. The dynamos at Niagara will not produce another Mont-Saint-Michel. "All the steam in the world," Adams wrote, "could not, like the Virgin, build Chartres."[3]

At the Shrine of Our Lady of Fàtima, on a plateau north of the Military Highway, a larger than life sculpture of Mary looks into the chemical air. The original of this shrine stands in central Portugal, where in May, 1917, three children said they saw a Lady, brighter than the sun, raised on a cloud in an evergreen tree.[4] Five months later, on a wet and chilly October day, the Lady again appeared, this time before a large crowd. Some who were skeptical did not see the miracle. Others in the crowd reported, however, that "the sun appeared and seemed to tremble, rotate violently and fall, dancing over the heads of the throng. . . ."[5]

The Shrine was empty when I visited it. The cult of Our Lady of Fàtima, I imagine, has only a few devotees. The cult of Pareto optimality, however, has many. Where some people see only environmental devastation, its devotees perceive efficiency, utility, and the maximization of wealth. They see the satisfaction of wants. They envision the good life. As I looked over the smudged and ruined terrain I tried to share that vision. I hoped that Our Lady of Fàtima, worker of miracles, might serve, at least for the moment, as the Patroness of cost-benefit analysis. I thought of all the wants and needs that are satisfied in a landscape of honeymoon cottages, commercial strips, and dumps for hazardous waste. I saw the miracle of efficiency. The prospect, however, looked only darker in that light.

I

This essay concerns the economic decisions we make about the environment. It also concerns our political decisions about the environment. Some people have suggested that ideally these should be the same, that all environmental problems are problems in distribution. According to this view there is an environmental problem only when some resource is not allocated in equitable and efficient ways.[6]

This approach to environmental policy is pitched entirely at the level of the consumer. It is his or her values that count, and the measure of these values is the individual's willingness to pay. The problem of justice or fairness in society becomes, then, the problem of distributing goods and services so that more people get more of what they want to buy. A condo on the beach. A snowmobile for the mountains. A tank full of gas. A day of labor. The only values we have, on this view, are those which a market can price.[7]

How much do you value open space, a stand of trees, an "unspoiled" landscape? Fifty dollars? A hundred? A thousand? This is one way to measure value. You could compare the amount consumers would pay for a townhouse or coal or a landfill and the amount they would pay to preserve an area in its "natural" state. If users would pay more for the land with the house, the coal mine, or the landfill, than without—less construction and other costs of development—then the efficient thing to do is to improve the land and thus increase its value. That is why we have so many tract developments. And pizza stands. And gas stations. And strip mines. And landfills. How much did you spend last year to preserve open space? How much for pizza and gas? "In principle, the ultimate measure of environmental quality," as one basic text assures us, "is the value people place on these . . . services or their *willingness to pay*."[8]

Willingness to pay. What is wrong with that? The rub is this: not all of us think of ourselves simply as *consumers*. Many of us regard ourselves *as citizens* as well. We act as consumers to get what we want *for ourselves*. We act as citizens to achieve what we think is right or best *for the community*. The question arises, then, whether what we want for ourselves individually as consumers is consistent with the goals we would set for ourselves collectively as citizens. Would I vote for the sort of things I shop for? Are my preferences as a consumer consistent with my judgments as a citizen?

They are not. I am schizophrenic. Last year, I fixed a couple of tickets and was happy to do so since I saved fifty dollars. Yet, at election time, I helped to vote the corrupt judge out of office. I speed on the highway; yet I want the police to enforce laws against speeding. I used to buy mixers in returnable bottles—but who can bother to return them? I buy only disposables now, but, to soothe my conscience, I urge my state senator to outlaw one-way containers. I love my car; I hate the bus. Yet I vote for candidates who promise to tax gasoline to pay for public transportation. I send my dues to the Sierra Club to protect areas in Alaska I shall never visit. And I support the work of the American League to Abolish Capital Punishment although, personally, I have nothing to gain one way or the other. (When I hang, I will hang myself.) And of course I applaud the Endangered Species Act, although I have no earthly use for the Colorado squawfish or the Indiana bat. I support almost any political cause that I think will defeat my consumer interests. This is because I have contempt for—although I act upon—those interests. I have an "Ecology Now" sticker on a car that leaks oil everywhere it's parked.

The distinction between consumer and citizen preferences has long vexed the theory of public finance. Should the public economy serve the same goals as the household economy? May it serve, instead, goals emerging from our association as citizens? The question asks if we may collectively strive for and achieve only those items we individually compete for and consume. Should we aspire, instead, to public goals we may legislate as a nation?

The problem, insofar as it concerns public finance, is stated as follows by R. A. Musgrave, who reports a conversation he had with Gerhard Colm.

> He [Colm] holds that the individual voter dealing with political issues has a frame of reference quite distinct from that which underlies his allocation of income as a consumer. In the latter situation the voter acts as a private individual determined by self-interest and deals with his personal wants; in the former, he acts as a political being guided by his image of a good society. The two, Colm holds, are different things.[9]

Are these two different things? Stephen Marglin suggests that they are. He writes:

> The preferences that govern one's unilateral market actions no longer govern his actions when the form of reference is shifted from the market to the political arena. The Economic Man and the Citizen are for all intents and purposes two different individuals. It is not a question, therefore, of rejecting individual . . . preference maps; it is, rather, that market and political preference maps are inconsistent.[10]

Marglin observes that if this is true, social choices optimal under one set of preferences will not be optimal under another. What, then, is the meaning of "optimality"? He notices that if we take a person's true preferences to be those expressed in the market, we may, then, neglect or reject the preferences that person reveals in advocating a political cause or position. "One might argue on welfare grounds," Marglin speculates, "for authoritarian rejection of individuals' politically revealed preferences in favor of their market revealed preferences!"

II

On February 19, 1981, President Reagan published Executive Order 12,291 requiring all administrative agencies and departments to support every new major regulation with a cost-benefit analysis establishing that the benefits of the regulation to society outweigh its costs.[11] The Order directs the Office of Management and Budget (OMB) to review every such regulation on the basis of the adequacy of the cost-benefit analysis supporting it. This is a departure from tradition. Traditionally, regulations have been reviewed not by OMB but by the courts on the basis of their relation not to cost-benefit analysis but to authorizing legislation.

A month earlier, in January 1981, the Supreme Court heard lawyers for the American Textile Manufacturers Institute argue against a proposed Occupational Safety and Health Administration (OSHA) regulation which would have severely restricted the acceptable levels of cotton dust in textile plants.[12] The lawyers for industry argued that the benefits of the regulation would not equal the costs. The lawyers for the government contended that the law required the tough standard. OSHA, acting consistently with Executive Order 12,291, asked the Court not to decide the cotton dust case, in order to give the agency time to complete the cost-benefit analysis required by the textile industry. The Court declined to accept OSHA's request and handed down its opinion on June 17, 1981.[13]

The Supreme Court, in a 5–3 decision, found that the actions of regulatory agencies which conform to the OSHA law need not be supported by cost-benefit analysis. In addition, the Court asserted that Congress in writing a statute, rather than the agencies in applying it, has the primary responsibility for balancing benefits and costs. The Court said:

> When Congress passed the Occupational Health and Safety Act in 1970, it chose to place preeminent value on assuring employees a safe and healthful working environment, limited only by the feasibility of achieving such an environment. We must measure the validity of the Secretary's actions against the requirements of that Act.[14]

The opinion upheld the finding of the Appeals Court that "Congress itself struck the balance between costs and benefits in the mandate to the agency."[15]

The Appeals Court opinion in *American Textile Manufacturers* vs. *Donovan* supports the principle that legislatures are not necessarily bound to a particular conception of regulatory policy. Agencies that apply the law, therefore, may not need to justify on cost-benefit grounds the standards they set. These standards may conflict with the goal of efficiency and still express our political will as a nation. That is, they may reflect not the personal choices of self-interested individuals, but the collective judgments we make on historical, cultural, aesthetic, moral, and ideological grounds.

The appeal of the Reagan Administration to cost-benefit analysis, however, may arise more from political than economic considerations. The intention, seen in the most favorable light, may not be to replace political or ideological goals with economic ones but to make economic goals more apparent in regulation. This is not to say that Congress should function to reveal a collective willingness-to-pay just as markets reveal an individual willingness-to-pay. It is to suggest that Congress should do more to balance economic with ideological, aesthetic, and moral goals. To think that environmental or worker safety policy can be based exclusively on aspiration for a "natural" and "safe" world is as foolish as to hold that environmental law can be reduced to cost-benefit accounting. The more we move to one extreme, as I found in Lewiston, the more likely we are to hear from the other.

III

The labor unions won an important political victory when Congress passed the Occupational Safety and Health Act of 1970.[16] That Act, among other things, severely restricts worker exposure to toxic substances. It instructs the Secretary of Labor to set "the standard which most adequately assures, to the extent feasible . . . that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard . . . for the period of his working life."[17]

Pursuant to this law, the Secretary of Labor, in 1977, reduced from ten to one part per million (ppm) the permissible ambient exposure level for benzene, a carcinogen for which no safe threshold is known. The American Petroleum Institute thereupon challenged the new standard in court.[18] It argued, with much evidence in its favor, that the benefits (to workers) of the one ppm standard did not equal the costs (to industry). The standard, therefore, did not appear to be a rational response to a market failure in that it did not strike an efficient balance between the interests of workers in safety and the interests of industry and consumers in keeping prices down.

The Secretary of Labor defended the tough safety standard on the ground that the law demanded it. An efficient standard might have required safety until it cost industry more to prevent a risk than it cost workers to accept it. Had Congress adopted this vision of public policy—one which can be found in many economics texts[19]—it would have treated workers not as ends-in-themselves but as means for the production of overall utility. And this, as the Secretary saw it, was what Congress refused to do.

The United States Court of Appeals for the Fifth Circuit agreed with the American Petroleum Institute and invalidated the one ppm benzene standard.[20] On July 2, 1980, the Supreme Court affirmed remanding the benzene standard back to OSHA for revision.[21] The narrowly based Supreme Court decision was divided over the role economic considerations should play in judicial review. Justice Marshall, joined in dissent by three other justices, argued that the Court had undone on the basis of its own theory of regulatory policy an act of Congress inconsistent with that theory. He concluded that the plurality decision of the Court "requires the American worker to return to the political arena to win a victory that he won before in 1970."[22]

To reject cost-benefit analysis, as Justice Marshall would, as a basis for public policy making is not necessarily to reject cost-effectiveness analysis, which is an altogether different thing. "*Cost-benefit analysis,*" one commentator points out, "is used by the decision maker to establish societal goals as well as the means for achieving these goals, whereas *cost-effectiveness analysis* only compares alternative means for achieving 'given' goals."[23] Justice Marshall's dissent objects to those who would make efficiency the goal of public policy. It does not necessarily object to those who would accomplish as efficiently as possible the goals Congress sets.[24]

IV

When efficiency is the criterion of public safety and health one tends to conceive of social relations on the model of a market, ignoring competing visions of what we as a society should be like. Yet it is obvious that there are competing conceptions of how we should relate to one other. There are some who believe, on principle, that worker safety and environmental quality ought to be protected only insofar as the benefits of protection balance the costs. On the other hand, people argue, also on principle, that neither worker safety nor environmental quality should be treated merely as a commodity, to be traded at the margin for other commodities, but should be valued for its own sake. The conflict between these two principles is logical or moral, to be resolved by argument or debate. The question whether cost-benefit analysis should play a decisive role in policymaking is not to be decided by cost-benefit analysis. A contradiction between principles—between contending visions of the good society—cannot be settled by asking how much partisans are willing to pay for their beliefs.

The role of the *legislator*, the political role, may be more important to the individual than the role of *consumer*. The person, in other words, is not to be treated as merely a bundle of preferences to be juggled in cost-benefit analyses. The individual is to be respected as an advocate of ideas which are to be judged in relation to the reasons for them. If health and environmental statutes reflect a vision of society as something other than a market by requiring protections beyond what are efficient, then this may express not legislative ineptitude but legislative responsiveness to public values. To deny this vision because it is economically inefficient is simply to replace it with another vision. It is to insist that the ideas of the citizen be sacrificed to the psychology of the consumer.

We hear on all sides that government is routinized, mechanical, entrenched, and bureaucratized; the jargon alone is enough to dissuade the most mettlesome meddler. Who can make a difference? It is plain that for many of us the idea of a national political community has an abstract and suppositious quality. We have only our private conceptions of the good, if no way exists to arrive at a public one. This is only to note the continuation, in our time, of the trend Benjamin Constant described in the essay, *De La Liberte des Anciens Comparee a Celle des Modernes.*[25] Constant observes that the modern world, as opposed to the ancient, emphasizes civil over political liberties, the rights of privacy and property over those of community and participation. "Lost in the multitude," Constant writes, "the individual rarely perceives the influence that he exercises," and, therefore, must be content with "the peaceful enjoyment of private independence."[26] The individual asks only to be protected by laws common to all in his pursuit of his own self-interest. The citizen has been replaced by the consumer; the tradition of Rousseau has been supplanted by that of Locke and Mill.

Nowhere are the rights of the moderns, particularly the rights of privacy and property, less helpful than in the area of the natural environment. Here the values we wish to protect—cultural, historical, aesthetic, and moral—are public values; they depend not so much upon what each person wants individually as upon what he or she believes we stand for collectively. We refuse to regard worker health and safety as commodities; we regulate hazards as a matter of right. Likewise, we refuse to treat environmental resources simply as public goods in the economist's sense. Instead, we prevent significant deterioration of air quality not only as a matter of individual self-interest but also as a matter of collective self-respect. How shall we balance efficiency against moral, cultural, and aesthetic values in policy for the workplace and the environment? No better way has been devised to do this than by legislative debate ending in a vote. This is not the same thing as a cost-benefit analysis terminating in a bottom line.

V

It is the characteristic of cost-benefit analysis that it treats all value judgments other than those made on its behalf as nothing but statements of preference, attitude, or emotion, insofar as they are value judgments. The cost-benefit analyst regards as true the judgment that we should maximize efficiency or wealth. The analyst believes that this view can be backed by reasons;[27] the analyst does not regard it as a preference or want for which he or she must be willing to pay. The cost-benefit analyst, however, tends to treat all other normative views and recommendations as if they were nothing but subjective reports of mental states. The analyst supposes in all such cases that "this is right" and "this is what we ought to do" are equivalent to "I want this" and "this is what I prefer." Value judgments are beyond criticism if, indeed, they are nothing but expressions of personal preference; they are incorrigible since every person is in the best position to know what he or she wants. All valuation, according to this approach, happens *in foro interno;* debate *in foro publico* has no point. On this approach, the reasons that people give for their views, unless these people are welfare economists, do not count; what counts is how much they are willing to pay to satisfy their wants. Those who are willing to pay the most, for all intents and purposes, have the right view; theirs is the more informed opinion, the better aesthetic judgment, and the deeper moral insight.

The assumption that valuation is subjective, that judgments of good and evil are nothing but expressions of desire and aversion, is not unique to economic theory.[28] There are psychotherapists—Carl Rogers is an example—who likewise deny the objectivity or cognitivity of valuation.[29] For Rogers, there is only one criterion of worth: it lies in "the subjective world of the individual. Only he knows it fully."[30] The therapist shows his or her client that a "value system is not necessarily something imposed from without, but is something experienced."[31] Therapy succeeds when the client "perceives himself in such a way that no self-experience can be discriminated as more or less worthy of positive self-regard than any other. . . ."[32] The client then "tends to place the basis of standards within himself, recognizing that the 'goodness' or 'badness' of any experience or perceptual object is not something inherent in that object, but is a value placed in it by himself."[33]

Rogers points out that "some clients make strenuous efforts to have the therapist exercise the valuing function, so as to provide them with guides for action."[34] The therapist, however, "consistently keeps the locus of evaluation with the client."[35] As long as the therapist refuses to "exercise the valuing function" and as long as he or she practices an "unconditional positive regard"[36] for all the affective states of the client, then the therapist remains neutral among the client's values or "sensory and visceral experiences."[37] The role of the therapist is legitimate, Rogers suggests, because of this value neutrality. The therapist accepts all felt preferences as valid and imposes none on the client.

Economists likewise argue that their role as policymakers is legitimate because they are neutral among competing values in the client society. The political economist, according to James Buchanan, "is or should be ethically neutral: the indicated results are influenced by his own value scale only insofar as this reflects his membership in a larger group."[38] The economist might be most confident of the impartiality of his or her policy recommendations if he or she could derive them formally or mathematically from individual preferences. If theoretical difficulties make such a social welfare function impossible,[39] however, the next best thing, to preserve neutrality, is to let markets function to transform individual preference orderings into a collective ordering of social states. The analyst is able then to base policy on preferences that exist in society and are not necessarily his own.

Economists have used this impartial approach to offer solutions to many outstanding social problems, for example, the controversy over abortion. An economist argues that "there is an optimal number of abortions, just as there is an optimal level of pollution, or purity. . . . Those who oppose abortion could eliminate it entirely, if their intensity of feeling were so strong as to lead to payments that were greater at the margin than the price anyone would pay to have an abortion."[40] Likewise economists, in order to determine whether the war in Vietnam was justified, have estimated the willingness to pay of those who demonstrated against it.[41] Likewise it should be possible, following the same line of reasoning, to decide whether Creationism should be taught in the public schools, whether black and white people should be segregated, whether the death penalty should be enforced, and whether the square root of six is three. All of these questions depend upon how much people are willing to pay for their subjective preferences or wants—or none of them do. This is the beauty of cost-benefit analysis: no matter how relevant or irrelevant, wise or stupid, informed or uninformed, responsible or silly, defensible or indefensible wants may be, the analyst is able to derive a policy from them—a policy which is legitimate because, in theory, it treats all of these preferences as equally valid and good.

VI

Consider, by way of contrast, a Kantian conception of value.[42] The individual, for Kant, is a judge of values, not a mere haver of wants, and the individual judges not for himself or herself merely, but as a member of a relevant community or group. The central idea in a Kantian approach to ethics is that some values are more reasonable than others and therefore have a better claim upon the assent of members of the community as such.[43] The world of obligation, like the world of mathematics or the world of empirical fact, is intersubjective, it is public not private, so that objective standards of argument and criticism apply. Kant recognizes that values, like beliefs, are subjective states of mind, but he points out that like beliefs they have an objective content as well; therefore they are either correct or mistaken. Thus Kant discusses valuation in the context not of psychology but of cognition. He believes that a person who makes a value judgment—or a policy recommendation—claims to know what is *right* and not just what is *preferred*. A value judgment is like an empirical or theoretical judgment in that it claims to be *true*, not merely to be *felt*.

We have, then, two approaches to public policy before us. The first, the approach associated with normative versions of welfare economics, asserts that the only policy recommendation that can or need be defended on objective grounds is efficiency or wealth-maximization. Every policy decision after that depends only on the preponderance of feeling or preference, as expressed in willingness to pay. The Kantian approach, on the other hand, assumes that many policy recommendations other than that one may be justified or refuted on objective grounds. It would concede that the approach of welfare economics applies adequately to some questions, e.g., those which ordinary consumer markets typically settle. How many yo-yos should be produced as compared to how many frisbees? Shall pens have black ink or blue? Matters such as these are so trivial it is plain that markets should handle them. It does not follow, however, that we should adopt a market or quasi-market approach to every public question.

A market or quasi-market approach to arithmetic, for example, is plainly inadequate. No matter how much people are willing to pay, three will never be the square root of six. Similarly, segregation is a national curse and the fact that we are willing to pay for it does not make it better but only makes us worse. Similarly, the case for abortion must stand on the merits; it cannot be priced at the margin. Similarly, the war in Vietnam was a moral debacle and this can be determined without shadow-pricing the willingness to pay of those who demonstrated against it. Similarly, we do not decide to execute murderers by asking how much bleeding hearts are willing to pay to see a person pardoned and how much hard hearts are willing to pay to see him hanged. Our failures to make the right decisions in these matters are failures in arithmetic, failures in wisdom, failures in taste, failures in morality—but not market failures. There are no relevant markets to have failed. What separates these questions from those for which markets are appropriate is this. They involve matters of knowledge, wisdom, morality, and taste that admit of better or worse, right or wrong, true or false—and these concepts differ from that of economic optimality. Surely environmental questions—the protection of wilderness, habitats, water, land, and air as well as policy toward environmental safety and health—involve moral and aesthetic principles and not just economic ones. This is consistent, of course, with cost-effectiveness and with a sensible recognition of economic constraints.

The neutrality of the economist, like the neutrality of Rogers' therapist, is legitimate if private preferences or subjective wants are the only values in question. A person should be left free to choose the color of his or her necktie or necklace—but we cannot justify a theory of public policy or private therapy on that basis. If the patient seeks moral advice or tries to find reasons to justify a choice, the therapist, according to Rogers' model, would remind him or her to trust his visceral and sensory experiences. The result of this is to deny the individual status as a cognitive being capable of responding intelligently to reasons; it reduces him or her to a bundle of affective states. What Rogers' therapist does to the patient the cost-benefit analyst does to society as a whole. The analyst is neutral among our "values"—having first imposed a theory of what value is. This is a theory that is impartial among values and for that reason fails to treat the persons who have them with respect or concern. It does not treat them even as persons but only as locations at which wants may be found. And thus we may conclude that the neutrality of economics is not a basis for its legitimacy. We recognize it as an indifference toward value—an indifference so deep, so studied, and so assured that at first one hesitates to call it by its right name.

VII

The residents of Lewiston at the conference I attended demanded to know the truth about the dangers that confronted them and the reasons for these dangers. They wanted to be convinced that the sacrifice asked of them was legitimate even if it served interests other than their own. One official from a large chemical company dumping wastes in the area told them, in reply, that corporations were people and that people could talk to people about their feelings, interests, and needs. This sent a shiver through the audience. Like Joseph K. in *The Trial,*[44] the residents of Lewiston asked for an explanation, justice, and truth, and they were told that their wants would be taken care of. They demanded to know the reasons for what was continually happening to them. They were given a personalized response instead.

This response, that corporations are "just people serving people" is consistent with a particular view of power. This is the view that identified power with the ability to get what one wants as an individual, that is, to satisfy one's personal preferences. When people in official positions in corporations or in the government put aside their personal interests, it would follow that they put aside their power as well. Their neutrality then justifies them in directing the resources of society in ways they determine to be best. This managerial role serves not their own interests but those of their clients. Cost-benefit analysis may be seen as a pervasive form of this paternalism. Behind this paternalism, as William Simon observes of the lawyer-client relationship, lies a theory of value that tends to personalize power. "It resists understanding power as a product of class, property, or institutions and collapses power into the personal needs and dispositions of the individuals who command and obey."[45] Once the economist, the therapist, the lawyer, or the manager abjures his own interests and acts wholly on behalf of client individuals, he appears to have no power of his own and thus justifiably manipulates and controls everything. "From this perspective it becomes difficult to distinguish the powerful from the powerless. In every case, both the exercise of power and submission to it are portrayed as a matter of personal accommodation and adjustment."[46]

The key to the personal interest or emotive theory of value, as one commentator has rightly said, "is the fact that emotivism entails the obliteration of any genuine distinction between manipulative and non-manipulative social relations."[47] The reason is that once the effective self is made the source of all value, the public self cannot participate in the exercise of power. As Philip Reiff remarks, "the public world is constituted as one vast stranger who appears at inconvenient times and makes demands viewed as purely external and therefore with no power to elicit a moral response."[48] There is no way to distinguish tyranny from the legitimate authority that public values and public law create.[49]

"At the rate of progress since 1900," Henry Adams speculates in his *Education,* "every American who lived into the year 2000 would know how to control unlimited power."[50] Adams thought that the Dynamo would organize and release as much energy as the Virgin. Yet in the 1980s, the citizens of Lewiston, surrounded by dynamos, high tension lines, and nuclear wastes, are powerless. They do not know how to criticize power, resist power, or justify power—for to do so depends on making distinctions between good and evil, right and wrong, innocence and guilt, justice and injustice, truth and lies. These distinctions cannot be made out and have no significance within an emotive or psychological theory of value. To adopt this theory is to imagine society as a market in which individuals trade voluntarily and without coercion. No individual, no belief, no faith has authority over them. To have power to act as a nation, however, we must be able to act, at least at times, on a public philosophy, conviction, or faith. We cannot replace with economic analysis the moral function of public law. The antinomianism of cost-benefit analysis is not enough.

Notes

1. H. Adams, *The Education of Henry Adams* 380 (1970, 1961).
2. *Id.*
3. *Id.* at 388.
4. For an account, see J. Pelletier, *The Sun Danced At Fatima* (1951).
5. *New Catholic Encyclopedia* 856 (1967).
6. See, e.g., W. Baxter, *People or Penguins: The Case For Optimal Pollution* chap. 1 (1974). See generally A. Freeman III, R. Haveman, A. Kneese, *The Economics of Environmental Policy* (1973).
7. R. Posner puts this point well in discussing wealth maximization as an ethical concept. "The only kind of preference that counts in a system of wealth-maximization," he writes, "is . . . one that is backed up by money—in other words, that is registered in a market." Posner, "Utilitarianism, Economics, and Legal Theory," 8 *J. Legal Stud.* 119 (1979).
8. Freeman et al., note 6 *supra* at 23.
9. R. Musgrave, *The Theory of Public Finance* 87–88 (1959).
10. Marglin, "The Social Rate of Discount and the Optimal Rate of Investment," 77 *Q. J. of Econ.* 98 (1963).
11. See 46 *Fed. Reg.* 13193 (February 19, 1981). The Order specifies that the cost-benefit requirement shall apply "to the extent permitted by law."
12. *American Textile Mfgrs. Inst.* v. *Bingham,* 617 F.2d 636 (D.C. Cir. 1979) *cert.* granted *sub nom.* [1980]; *American Textile Mfgrs.* v. *Marshall,* 49 U.S.L.W. 3208.
13. *Textile Mfgrs.* v. *Donovan,* 101 S.Ct. 2478 (1981).
14. *Id.* U.S.L.W. (1981), 4733–34.
15. *Ibid.,* 4726–29.
16. Pub. L. No. 91-596, 84 Stat. 1596 (codified at 29 U.S.C. 651-78) (1970).
17. 29 U.S.C., 655(b) (5).
18. *American Petroleum Institute* v. *Marshall,* 581 F.2d 493 (1978) (5th Cir.), aff'd 100 S. Ct. 2844 (1980).
19. See, e.g., R. Posner, *Economic Analysis of Law,* parts I, II (1972, 1973). In *The Costs of Accidents* (1970), G. Calabresi argues that accident law balances two goals, "efficiency" and "equality" or "justice."
20. 581 F.2d 493 (1978).
21. 100 S.Ct. 2844 (1980).
22. *Id.* at 2903.
23. M. Baram, "Cost-Benefit Analysis: An Inadequate Basis for Health, Safety and Environmental Regulatory Decision Making" 8 *Ecological Law Quarterly* 473 (1980).
24. See 49 U.S.L.W. 4724–29 for this reasoning applied in the cotton dust case.
25. *De la Liberte des Anciens Comparee a Celle des Modernes* (1819).
26. *Oeuvres Politiques de Benjamin Constant,* ed. C. Luandre 269 (Paris, 1874); quoted in S. Wolin, *Politics and Vision* 281 (1960).
27. There are arguments that whatever reasons may be given are no good. See, e.g., Dworkin, "Why Efficiency?" 8 *Hofstra L. Rev.* 563 (1980); Dworkin, "Is Wealth a Value?" 9 *J. Legal Stud.* 191 (1980); Kennedy, "Cost-Benefit Analysis of Entitlement Problems: A Critique" 33 *Stan L. Rev.* 387 (1980); Rizzo, "The Mirage of Efficiency" 8 *Hofstra L. Rev.* 641 (1980); Sagoff, "Economic Theory and Environmental Law" 79 *Mich L. Rev.* 1393 (1981).
28. This is the emotive theory of value. For the classic statement, see C. Stevenson, *Ethics and Language* chaps. 1, 2 (1944). For criticism, see Blanshard, "The New Subjectivism in Ethics" 9 *Philosophy and Phenomenological Research* 504 (1949). For a statement of the related interest theory of value, see E. Westermarck, *Ethical Relativity* chaps. 3, 4, 5 (1932); R. Perry, *General Theory of Value* (1926). For criticisms of subjectivism in ethics and a case for the objective theory presupposed here, see generally, P. Edwards, *The Logic of Moral Discourse* (1955) and W. Ross, *The Right and the Good* (1930).
29. My account is based on C. Rogers, *On Becoming*